IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8325 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD ELECTRICITY COMPANY LIMITED

Versus

RAMESH D DEVNANI

Appearance:

MR PRAFUL N THAKKAR for the Petitioner.

MR HIREN P VYAS for the Respondent.

MR PM VYAS for the Respondent.

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 15/10/2004

CAV JUDGEMENT

The present petition has been preferred under Articles 226 and 227 of the Constitution of India, whereby, the petitioner has challenged the order dated in Civil Suit no. 1917 of 2004 passed by the learned Judge, City Civil Court, Ahmedabad, mainly on the ground that the Ahmedabad City Civil Court has no jurisdiction to

entertain the civil suit in view of the provisions of the Electricity Act, 2003, especially in view of section 145 thereof and has also prayed to quash and set aside the order below application exh. 15 in Civil Suit no. 1917 of 2004 passed by the Ahmedabad City Civil Court, Ahmedabad.

2. The learned counsel for the petitioner mainly submitted that the above civil suit has been preferred by the respondent for a declaration that the action of the petitioner of disconnection of electricity of the respondent(original plaintiff) bearing customer service no. 927337 of Naranpura zone, is illegal, unreasonable and violative of principles of natural justice and for getting a direction against the petitioner for immediate reconnection of electricity connection of the respondent-plaintiff. It is also submitted by the learned counsel for the petitioner that a reply was filed to the suit as well as to the injunction application by the petitioner company before City Civil Court, Ahmedabad wherein it was pointed out that the premises of the respondent was checked by the officers of the petitioner company and it was found that there was a theft of electricity in DP box, lead seal simple plyet press and lighting meter terminal cover as well as PVC seal were found disturbed. The terminal was open and it was found in the box that there is an extra black colour wire used for phase to phase link. By the aforesaid irregularity, it is found that the respondent had used "phase to phase link by one additional extra black colour wire so that without getting recorded consumption of electricity in the meter, the petitioner can get uninterrupted supply of electricity. Because of the aforesaid facts, the meter was sealed and was taken to the laboratory. Photographs of the aforesaid meter were also produced alongwith reply of the suit as well as injunction application before the trial court and the same has also been produced before this court at page 48 onwards at Annexure "C" collectively. It is also submitted by the learned counsel for the petitioner that immediately a checking report was issued to the opponent and the same is produced at page 53 of the memo of the petition. In fact, electricity connection has not been given to the respondent. Nonetheless, the respondent is using the electricity connection. It is also submitted by the learned counsel for the petitioner that thereafter assessment of theft of electricity was also given to the respondent which is at Rs 64,962/-. The respondent thereafter, filed a civil suit and the trial court passed the following order:

"You the defendant A.E.C. is directed to reconnect the electric supply by plaintiff consumer No. 927337 within reasonable time, subject to plaintiff depositing Rs. 9000/- towards final assessment of their bill at first instance. Amount be accepted this day and necessary direction be given to the concerned staff. Yadi be sent to A.E.C. forthwith."

The learned counsel for the petitioner submitted that the aforesaid order was passed on 12th July, 2004 which was served to the petitioner on the same day at 12.00 noon. Thereafter, the petitioner company had filed an application for staying the above order as the City Civil Court has no jurisdiction to entertain the civil suit for the case filed under section 135 of the Electricity Act, 2003 as the same is barred by section 145 of the Electricity Act. The petitioner company has also lodged a complaint being crime register No. II/64/2004 with G.E.B./A.E.C. police station, Sabarmati against the respondent (Annexure "E") on 12th July, 2004 at 16.30 hours. The learned counsel for the petitioner has also relied upon several case laws decided by the Hon'ble Supreme Court and other High Courts which will be discussed at a later stage in this judgment.

3. The learned counsel for the petitioner has vehemently submitted that when there are provisions which oust the jurisdiction of the Civil Court, especially under section 145 of the Electricity Act, the trial court ought not to have passed an order. In view of the aforesaid facts and the clear position of law, it was submitted by the learned counsel for the petitioner that the civil suit filed by the respondent being Regular Civil Suit no. 1907 of 2004 is not tenable at law and hence, the City Civil Court at Ahmedabad has no jurisdiction to entertain the same.

4. Upon issuance of the notice, the respondent has appeared through his learned advocate. The learned counsel for the respondent mainly submitted that the petitioner company has no power and authority to disconnect electricity connection except under section 56 of the Electricity Act, 2003 and as per section 56, 15 days' notice must be given by the petitioner for disconnection of electricity. In the present case, no such notice has ever been given by the petitioner company and without giving an opportunity of being heard, the petitioner company has disconnected the electricity connection. The learned counsel for the respondent submitted that the assessment under section 126 includes the assessment for theft of electricity and, therefore,

whenever the assessment is made by the petitioner company towards theft of electricity, procedure envisaged under section 126 of the Act is required to be followed by the petitioner company. In the present case, though the respondent is assessed for the theft of electricity, no such procedure as envisaged under section 126 of the Act has ever been followed and hence, the action of the petitioner company deserves to be quashed and set aside. It is also submitted by the learned counsel for the respondent that the appellate authority as referred to under section 127 of the Act of 2003, has not been appointed so far. Therefore, till the said authority is appointed, City Civil Court, Ahmedabad has jurisdiction to decide the suit filed by the respondent as the same is a civil matter covered by section 9 of the Code of Civil Procedure. It is also averred by the learned counsel for the respondent that as per para-6 of the suit filed by the respondent, the petitioner has no power, jurisdiction and authority to disconnect the electricity connection. It is also contended by the learned counsel for the respondent that as per para-8 of the plaint, it is categorically mentioned that the petitioner has committed breach of the provisions of section 126(1) and 126(2) of the Act of 2003. No assessment has been given by the petitioner to the respondent. The appellate authority has also not been constituted. Therefore, City Civil Court has jurisdiction to try the civil suit filed by the respondent.

5. After hearing learned counsel for both the parties and looking to the provisions of the Electricity Act as well as conditions of Supply approved by the Government of Gujarat vide notification no. GU-94-10-AEC-1691-4209-K dated 14th October, 1994 framed under section 21(2) of the Indian Electricity Act, 1910, City Civil Court at Ahmedabad has no jurisdiction to entertain this civil suit filed by the respondent. Section 145 of the Electricity Act, 2003 reads as under:

"145. Civil court not to have jurisdiction- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act or to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

6. From the aforesaid provisions, it is

crystal clear the jurisdiction of the Civil Court is barred by the special provisions carved out under section 145 of the Act of 2003. It is also directed by the Legislature that no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. The aforesaid section is to be read with section 153 of the Electricity Act, 2003. Section 153 of Electricity Act, 2003 reads as under:

"153. Constitution of Special Courts- (1) The State Government may, for the purposes of providing speedy trial of offences referred to in sections 135 to 139, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.
(2) A Special Court shall consist of a single Judge who shall be appointed by the State Government with the concurrence of the High Court.
(3) A person shall not be qualified for appointment as a Judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge.
(4) Where the office of the Judge of a Special Court is vacant, or such Judge is absent from the ordinary place of sitting of such Special Court, or he is incapacitated by illness or otherwise for the performance of his duties, any urgent business in the Special Court shall be disposed of-
(a) by a Judge, if any, exercising jurisdiction in the Special Court;
(b) where there is no such other Judge available, in accordance with the direction of District and Sessions Judge having jurisdiction over the ordinary place of sitting of Special Court, as notified under sub-section (1)."

7. From the aforesaid provisions, it is abundantly clear that a special court has to be constituted and in pursuance of section 153(1), a notification has also been published by the Government of Gujarat, Legal Department, Sachivalaya, Gandhinagar vide notification dated 21st June, 2004 which is at Annexure "D" to the memo of the petition, whereby the Government of Gujarat has constituted a special court for different districts, consisting of Additional District and Sessions Judge and for the City of Ahmedabad, consisting of City Civil and Sessions Judge for the purpose of providing speedy trial of offences referred to in sections 135(2) and 139 of the said Act. As per the procedure and the power of the Special Court, referred to in section 154,

it is categorically mentioned in sub-paragraph (5) of section 154 that the Special Court may also determine civil liability against the consumer or a person in terms of money, for theft of energy which shall not be less than an amount equivalent to 2 times of tariff rate applicable for a period of 12 months, preceding the date of detection of theft of energy. The civil liability so determined shall be recoverable as if it were a decree of Civil Court. Section 154(5) of the Electricity Act, 2003 reads as under:

"154. Procedure and power of Special Court-
(1) xxx xxx xxx
(2) xxx xxx xxx
(3) xxx xxx xxx
(4) xxx xxx xxx
(5) The Special Court may determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court."

Thus, in the instant case, the theft of electricity has been committed by the respondent as per the checking report given by the officers of the petitioner. The assessment of theft of energy has also been given to the respondent by the petitioner company as per provisions of section 135 of the Electricity Act, 2003 read with clause 23(b) of the Conditions of Supply read with Condition no. 11 of Part III of Conditions of Supply and Miscellaneous Charges framed under Indian Electricity Act, 1910. It is also contended by the learned counsel for the petitioner company that there is a presumption of theft of energy if it is proved that any artificial means or means not authorised by the Board of licensee exists for the abstraction of the consumption or use of electricity by the consumer, it shall be presumed, until contrary is proved that the obstruction, consumption or use of electricity has been dishonestly caused by such consumer. The aforesaid presumption is as per section 135(1) of the Act of 2003. In the present case, the respondent consumer has applied black colour wire for "phase to phase Line" so that there will be use and consumption of electricity but there will not be any recording of the consumption.

8. In pursuance of section 21(2) of the Act

of 1910, Conditions of Supply and Miscellaneous Charges have been framed and the same have been approved by the State of Gujarat vide Notification No. GU-94-19-AEC-1691-4208-K dated 14th October, 1994. Clauses 22 and 23 read as under:

"22. Malpractice- (a) Malpractice shall mean contravention by the consumer of any of the provisions of the Act, the Electricity (Supply) Act, 1948 or the Indian Electricity Rules, 1956 or of any other law governing the supply and use of electricity and the rules framed thereunder as also contravention of any of the provisions of the Licensee's "Conditions of Supply and Miscellaneous Charges" or any of the terms and conditions of any agreement governing the supply of electricity by the Licensee to the consumer and shall in particular include the following cases-

i) Supply of electricity by a consumer without the permission of the licensee to any other person or premises whose supply to service has been disconnected by the Licensee for any reason or for which the service was originally provided by the Licensee and subsequently removed.

ii) The drawl of power by the consumer in excess of his contract demand without the specific permission of the Licensee.

(iii) Unauthorised addition or alteration of, or extension to the consumer's electrical installation without the permission of the Licensee.

iv) The use of Licensee's supply by the consumer under a higher method of charging than that under which the supply was originally made available to the consumer.

v) Capacitors once installed when found to have been removed from the installation.

(b) In the cases of unauthorised additions, alterations or extensions carried out by low voltage and medium voltage consumers to their electrical installations without the permission of the Licensee, the Licensee shall be entitled to recover from the consumer additional charges retrospectively for such unauthorised additions, alterations or extensions as prescribed under item No.12 of Part II of these Conditions of Supply together with incidental charges. Payment of such charges shall not entitle the consumer to continue to use

unauthorised load in future as a matter of right.

(c) Without prejudice to the rights of the Licensee to initiate legal proceedings against any person found to be committing any of the malpractices mentioned above, the Licensee shall be entitled to disconnect the supply of such a consumer. The supply shall not however be reconnected unless the consumer has qualified for reconnection by removing the cause of disconnection and settled the charges as per item (b)

23. a) Theft of energy-Malicious wastage or diversion of energy-Interference with meters or Licensee's works.

Under the Indian Electricity Act, 1910, the following acts are offences which are punishable with imprisonment or fine or both as prescribed under different sections as follows:-

Section	Description of offence	Punishment
39	Theft of energy	Imprisonment upto 3 years and/or fine of not less than Rupees One thousand.
40	Malicious wastage or diversion of energy	Imprisonment upto 2 years and/or fine upto Rupees one thousand.
44	Interference with meters or Licensee's works etc. including prevention of any meter from the correct registration of the	Imprisonment upto 3 years and/or fine upto Rupees five thousand.
39A	Abetment of offences Same punishable under section 39 and section 44 of the Act.	Same punishment for abetment as for the offence

(b) Without prejudice to the Licensee's rights to initiate legal proceedings against any consumer or person found to be committing any of the offences

mentioned under sub-item (a) above, the Licensee shall be entitled to disconnect the supply of a consumer or person and to recover from him such charges as are assessed by the Licensee as provided for under item No. 11 of Part II of these Conditions of Supply and Miscellaneous Charges. The Supply to the service will be kept disconnected for a period of 30 days from the date of disconnection on the ground of offences mentioned under sub-item (a) subject to review by Competent Authority or until the amount so assessed against theft of energy is paid by the consumer, whichever is later."

Similarly, clause 7 of the agreement between the petitioner and respondent as per Annexure "D" appended with the conditions of Supply reads as under:

"7. Agreement subject to other Laws- This agreement shall be read and construed as subject in all respects to the provisions of the Ahmedabad and District Electric Licence, 1944, the Company's Conditions of Supply and to the provisions of the Indian Electricity Act, 1910 and the Rules for the time being in force thereunder and the Bombay Electricity (Special Powers) Act, 1946 and the Electricity (Supply) Act, 1948 insofar as the same may respectively be applicable."

Condition no.11 (1)(iii) of Part-II of Conditions of Supply, reads as under:

"11 (1) Assessment of value of energy dishonestly abstracted, consumed or used or caused to be maliciously wasted diverted or prevented from being duly registered etc. on High Voltage or Low Tension works.

The value of energy deemed to have been dishonestly abstracted, consumed or used by the consumer or person, or caused to be maliciously wasted, diverted or prevented or caused to be prevented from being duly registered by the meter, indicator or apparatus installed by the Licensee at the consumer's premises (which acts are hereinafter referred to as the "offence") shall be assessed by the designated Assessing Authority of the Licensee as follows:-

(i) xxx xxx
(ii) xxx xxx
(iii) Energy Charges will be leviable on the consumption or units assessed as mentioned above and shall be payable therefor by the consumer or person, at twice the applicable rate, taking into account the nature of the

use of supply as also the type of premises wherein energy was being used at the time of detection of the offence. Fuel Cost Adjustment will also be payable on these units at the prevailing rates for different billing periods."

Provisions of section 135(2) of the Act of 2003 reads as under.

"135. Theft of electricity-(1) Whoever, dishonestly,-

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both;

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use-

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a

term not less than six months but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that if it is proved that any artificial means or means not authorised by the Board or licensee exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(2) Any officer authorised in this behalf by the State Government may-

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity (has been or is being) used unauthorisedly;

(b) search, seize and remove all such devices instruments, wires and any other facilitator or article which (has been or is being) used for unauthorised use of electricity;

(c) examine or seize any books or account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

Section 185(2),(3)and sub-section (5) of section 185 with the Schedule read as under:

"185. Repeal and saving (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commission Act, 1998 (14 of 1998) are hereby repealed.

(2) Notwithstanding such repeal-

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or

issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 (9 of 1910) and rules made thereunder shall have effect until the rules under sections 67 to 69 of this Act are made.

(c) the Indian Electricity Rules, 1956 made under section 37 of the Indian Electricity Act, 1910 (9 of 1910) as it stood before such repeal shall continue to be in force till the regulations under section 53 of this Act are made.

(d) all rules made under sub-section (1) of section 69 of the Electricity (Supply) Act, 1948 (54 of 1948) shall continue to have effect until such rules are rescinded or modified, as the case may be;

(e) all directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government.

(3) The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the State in which such enactments are applicable.

(4) xxx xxx

(5) Save as otherwise provided in sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals.

SCHEDULE

ENACTMENTS

1. xxx xxx
2. xxx xxx
3. xxx xxx

4. xxx xxx
5. xxx xxx
6. xxx xxx
7. xxx xxx
8. xxx xxx
9. The Gujarat Electricity Industry (Reorganisation and Regulation) Act, 2003.(Gujarat Act No. 24 of 2003.)

Looking to the facts and the arguments advanced by the learned counsel appearing for the respective parties, the it seems that the premises of the petitioner was inspected by the officers of respondent no.1 on 13th August, 2004 (as per Annexure "A" to the memo of the petition) and meter of the petitioner was found to be tampered with. It was found that there was a theft of electricity in DP box, lead seal simple plyet press and lighting meter terminal cover as well as PVC seal were found disturbed. The terminal was open and it was found in the box that there is an extra black colour wire used for phase to phase link. By the aforesaid irregularity, it is found that the respondent had used "phase to phase link by one additional extra black colour wire so that without getting recorded consumption of electricity in the meter, the respondent can get uninterrupted supply of electricity and, therefore, as defined under the provisions of section 135(1)(a)(b), theft of electricity has been committed by the respondent. Section 135(1) of the Act of 2003 reads as under:

" 135. Theft of electricity - (1) Whoever, dishonestly,

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both :

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use-

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that if it is proved that any artificial means or means not authorised by the Board or licensee exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer."

9. Thus, looking to the Annexure "A" and the provisions of section 135(1) of the Act, 2003, whenever a consumer is prima facie found to have committed theft of electricity, the petitioner no.1 has all right to disconnect the supply of electrical energy, in view of condition no. 23(b) of the Conditions of Supply, especially when there is an agreement between the parties as per Annexure "D" appended with the Conditions of Supply. It was also contended by the learned counsel for the respondent that as per the provisions of section 56 of the Act of 2003, at least 15 days' notice ought to be given to the respondent by the petitioner. This contention of the learned counsel for the respondent cannot be accepted. In my opinion, the respondent

customer is not required to be given any notice of hearing before disconnection of electricity in case of theft of energy. Section 56 of the Act of 2003 will apply in case of non-payment of charges of electricity during regular supply. So far as the case of theft is concerned, in view of the provisions of clause 23(b) of the Conditions of Supply, the petitioner has all power to disconnect forthwith the supply of electrical energy and there is no need of any notice to be given to the respondent in case of theft of electricity. This is fortified by the judgment delivered by the Hon'ble Supreme Court in the case of Usha Subbarao vs.B.E.Vishveswariah and others reported in AIR 1996, SC, 2258. Paragraphs 8 and 9 of the said judgment read as under:

"8. The learned counsel for the respondent placed strong reliance on Section 24 of the Indian Electricity Act, 1910 which contemplates seven days' notice before disconnection. Section 24 does not apply to demand on detection of pilferage. It would apply to a case of regular supply made and prior demand for payment of electricity charges with a notice of seven days to be made and for failure to pay within the given time, after expiry of seven days, the appellant as a licensee would get the right to disconnect the supply of electrical energy. It would thus be seen that disconnection will be in the course of regular supply of electricity for non-payment of the usual bills but not to any case demand after detection of pilferage.

9. The only question is whether the consumer is entitled to hearing before disconnection ? In view of the conditions to which the respondents had agreed at the time of installation and also the prima facie conclusion reached by the authorities, it was not necessary to give further hearing to the respondents. The action taken by the appellant is not violative of Article 20(1), 14 of the Constitution and principles of natural justice."

10. Looking to the provisions of section 185(2) read with section (3) of the Act of 1910, read with sub-section (5) with Schedule read with section 6 of the General Clauses Act, 1897, the Conditions of Supply and Miscellaneous Charges framed under the Act of 1910 are binding upon the respondent. As per section 185(2)(a)of the Act of 1910, the agreement entered into between the consumer and petitioner (which is in the format of Annexure "D" appended with Conditions of Supply framed under the Act of 1910), is binding, especially in view of clause 7 thereof.

11. The learned counsel for the petitioner company submitted that the assessment under sections 126 and 135 of The Electricity Act, 2003 are absolutely different from each other. The former is for "unauthorised use of electricity", whereas the latter one is for "theft of electricity", and, therefore, whenever there is an assessment for theft of electricity, it is always assessed under section 135 of the Act of 2003 and not under section 126 of the Act of 2003. I am in full agreement with the submission made by the learned counsel for the petitioner. Both sections 126 and 135 operate in different fields. This distinction has been clearly made out in a case decided by the High Court of Delhi in writ petition (civil) No. 649 of 2004 and other allied matters by the judgment dated 31st May, 2004. Paragraphs 38 and 39 of the said judgment read as under:

"38. The Explanation to Section 126 of the said Act defines the expression "unauthorised use of electricity" and the definition includes four categories as specified in sub para (b) to the Explanation. It has been defined to mean the usage of electricity (i) by any artificial means, (ii) by means not authorised by the concerned person or authority of licensee (iii) through a tampered meter, and (iv) for the purpose other than for which the usage of electricity was authorised. Thus, Section 126 can apply only in these cases since the same is confined to "unauthorised use of electricity". The expression"theft" has not been used under Section 126 of the said Act of 2003.

39. The expression "theft" has been used in Section 135 of the said Act. Thus, in the same enactment, these two expressions- "unauthorised use of electricity" and "theft" have been used separately and, thus, must have their own connotations. They cannot be said to be substitute for one or the other."

Thus, in the present case, the assessment made by the petitioner company is under section 135 of The Electricity Act, 2003 and not under section 126 of the said Act.

12. In case of theft of energy, assessment will be as per section 135 of the Electricity Act,2003 read with clause 23(b) of Conditions of Supply to be read with condition no.11 of part III of the Conditions of Supply and Miscellaneous Charges framed under the Act of 1910 and not under section 126 of the Electricity Act, 2003. and as referred to hereinabove, as per clause 11(1)(iii), energy charges will be leviable at twice the applicable rate. The learned counsel for the petitioners

submitted that in the present case, the respondent no.1 company has made assessment by applying penalty factor 2.5 times. (Annexure "C" to the memo of the petition). The learned counsel for the respondent no.1 has drawn my attention to sub-section (5) of section 154 of the Act of 2003.

Thus, from the aforesaid provisions, it becomes abundantly clear that in case of theft of electricity, the petitioner has correctly applied the penalty factor 2.5 times for six months twelve months). I am, therefore, in full agreement with the contentions raised by the learned counsel appearing for the petitioner company.

13. It is contended by the learned counsel for the respondent that as per section 185(2)(b) of the Act of 2003, the Conditions of Supply framed under section 21(2) of the Act of 1910 are not saved and hence are not binding to the petitioners. At the first instance, the aforesaid contention appears to be attractive, but holds no water, especially, in view of section 185(2)(a) of the Act of 2003. The words "any document or instrument" used in clause (a) of sub-clause (2) of section 135 of the Act of 2003 includes an agreement which is appended as Annexure "D" to the Conditions of Supply framed under the Act of 1910. As per clause 7 of the agreement, the Conditions of Supply sanctioned by State of Gujarat, are binding upon the petitioners. Moreover, looking to the provisions of sub-section (3) of section 185 of the Act of 2003, to be read with Schedule which includes Gujarat Electricity Industry (Reorganisation and Regularisation) Act, 2003. The said Act have been saved and as per section 21 of Gujarat Electricity Industry (Reorganisation and Regularisation) Act, 2003, Conditions of Supply framed under section 21(2) of the Act of 1910 are saved. Section 21 of the Gujarat Electricity Industry Act, 2003 reads as under:

"21. Power of licensee- (1) Subject to the provisions of this Act, the provisions of Sections 12 to 26 of the Indian Electricity Act, 1910 (9 of 1910), shall have effect as if reference to a licensee in those provisions is a reference to a licensee under this Act.
(2)(a) Where-
(i) any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to the Board, or a license (hereinafter in this sub-section referred to as " the licensee") in respect of the supply

of electricity to him, and

(ii) the Board or the licensee to whom such charge or other sum is due is a Government company or a corporation owned or controlled by the State Government,

such charge or other sum or the aggregate of such charge and other sum due to the Board or the licensee shall be recoverable as arrears of land revenue.

(b) For the purpose of effecting recovery of the charge or sum or both the charge and sum due from a person under clause (1) as the arrears of revenue, such officer as may be appointed by the State Government in this behalf by notification in the Official Gazette, shall have and exercise all the powers and perform all the duties of the Collector under the Bombay Land Revenue Code, 1879 (Bombay V of 1879).

(c) No suit or other legal proceeding shall lie in any civil court against the recovery of charge or other sum due as arrears of land revenue unless the person from whom such charge or sum is due deposits the amount of such charge or sum with the Board of the licensee;

Provided that the court may, in the case of hardship caused to the person from whom such charge or sum is due, in depositing the whole amount, dispense with deposit of the amount to the extent of not more than twentyfive percent of the amount due."

14. Thus, from the aforesaid provisions of the law, it is clear that Conditions of Supply framed under section 21(2) of the Act of 1910 are binding upon the petitioner and clause 23(b) empowers the respondent no.1 company for the disconnection of electricity supply, without issuance of any notice to the consumer (as per judgment delivered by the Hon'ble Supreme Court and reported in AIR 1996, SC, 2258) and such disconnection may be continued until the amount assessed against theft of energy is paid by the consumer.

15. It has been held by the Hon'ble Supreme Court in the case of M/s. Swastic Industries vs. Maharashtra State Electricity Board reported in AIR 1997, SC,1101, the relevant para-5 reads as under:

" 5. It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it. The right to file

a suit is a mater of option given to the licensee, the Electricity Board. Therefore, the mere fact that there is a right given to the Board to file the suit and the limitation has been prescribed to file the suit, it does not take away the right conferred on the Board under Section 24 to make demand for payment of the charges and on neglecting to pay the same. They have the power to discontinue the supply or cut off the supply, as the case may be, when the consumer neglects to pay the charges. The intendment appears to be that the obligations are mutual. The Board would supply electrical energy and the consumer is under corresponding duty to pay the sum due towards the electricity consumed. Thus, the Electricity Board, having exercised that power, since admittedly the petitioner had neglected to pay the bill for additional sum was right in disconnecting the supply without recourse to filing of the suit to recover the same. The National Commission, therefore, was right in following the judgment of the Bombay High Court and allowing the appeal setting aside the order of the State Commission. Moreover, there is no deficiency of service in making supplementary demand for escaped billing. There may be negligence or collusion by subordinate staff in not properly recording the reading or allowing pilferage to the consumers. That would be deficiency of service under the Consumer Protection Act. We do not find any illegality warranting interference."

16. The learned counsel for the petitioner has relied on the judgment delivered by this Court in the case of Kiran Industries, Mahesana vs. Gujarat Electricity Board, Baroda and another reported in 1995(2) GLH,1 for not giving any relief against disconnection of electricity supply unless the amount assessed is paid, by relying upon para 30 (iii) which reads as under:

"30. We think it necessary to summarise our conclusions on the basis of our aforesaid discussion. Our conclusions are :

(i) xxx xxx
(ii) xxx xxx
(ii) Even in a suit questioning the legality and validity of a bill for consumption without higher charges issued by the Board (where Condition No. 34 is not applicable) the proper exercise of discretion for grant of interim relief against disconnection for non-payment of the bill would be to direct the suitor to pay the amount of the bill to Board on condition that the Board would treat it as deposit carrying the commercial rate

> of interest to be adjusted against future bills after the decision in the suit in case the suitor ultimately succeeds therein. Only in the rarest of rare cases, the Court would grant interim relief against disconnection without payment of the bill in question to the Board but on certain terms and conditions. This can be done only after giving cogent and convincing reasons on the basis of exceptional circumstances brought on record."

Thus, as per the judgment delivered by the Division Bench of this Court, the bill amount ought to be ordered to be paid even when legality and validity of the bill is under challenge. Section 56 of the Act of 2003 is applicable only where any consumer neglects the payment of charges on regular basis, but whenever there is a theft of energy, the respondent no.1 has power to disconnect electricity connection forthwith without giving any notice of hearing as per Conditions of Supply framed under section 21(2) of the Act of 1910 and as per the judgments of the Hon'ble Apex Court referred to hereinabove, namely AIR 1996,SC,2258 and AIR 1997, SC,1101.

17. Thus, looking to the aforesaid facts and circumstances, the City Civil Court at Ahmedabad has no jurisdiction and power to entertain civil suit filed by the respondent. The contention of the learned counsel for the respondent that the petitioner company cannot disconnect electricity connection without giving notice even in case of theft of electric energy, is devoid of any merits. The present case is a case of theft of energy. There is already an assessment of theft of energy as per Annexure "A" to the memo of petition which is to the tune of Rs. 64,962/-. Therefore, the order passed by the trial court directing the petitioner company to reconnect electricity connection of the respondent subject to deposit of Rs. 9000/- is also bad in law as whenever Civil Court's jurisdiction is barred, the Civil Court ought not to have entertained the suit. Under several Acts, there are provisions like section 145 of the Electricity Act, 2003. The learned counsel for the petitioner has drawn my attention towards similar provisions of Income-tax Act, 1961, especially section 297 thereof. There are several Acts in which the provisions have been enacted, whereby the Civil Court's jurisdiction is ousted, indirectly e.g. Industrial Disputes Act, 1947 as well as The Urban Land (Ceiling and Regulations) Act, 1976. Even if the Special Court or

appellate authority as referred to in sections 127 and 153 of the Electricity Act, 2003 have not been constituted, the City Civil Court cannot assume power, jurisdiction and authority to entertain the suit. Once the jurisdiction of Civil Court is specifically barred by the Act and appellate authority or Special Court under the Act is not appointed or after appointment, is not available for any reason, a writ is tenable at the High Court. But what is barred can never be entertained by the City Civil Court, Ahmedabad. A thing which cannot be done directly, can never be done indirectly.

18. In view of the aforesaid facts and circumstances and the provisions of law, in my opinion, the order passed by the City Civil Court, directing the petitioner company to immediately reconnect the electricity connection of the respondent is bad in law, without jurisdiction, null and void and is hereby declared as null, void, without authority and without jurisdiction. Accordingly, it is held and declared that the City Civil Court, Ahmedabad has no jurisdiction to entertain Civil Suit and grant any injunction therein in view of the provisions of section 145 of the Electricity Act, 2003. Consequently, the order below injunction application exh. 15 in Regular Civil Suit no. 1907 of 2004 passed by the City Civil Court, Ahmedabad is hereby quashed and set aside. The petition is allowed. Rule made absolute with no order as to costs.

(D.N.Patel,J)

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